

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM SANTIAGO,)	
)	
Petitioner,)	
v.)	C.A. No. 04-11863-EFH
)	
LOIS RUSSO, SUPERINTENDENT,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

On August 24, 2004, petitioner William Santiago, now incarcerated at the Souza Baranowski Correctional Center, filed his self-prepared petition under 28 U.S.C. § 2254 for writ of habeas corpus accompanied by an Application to Proceed Without Prepayment of Fees ("Application"). For the reasons stated below, the Court (1) allows petitioner's Application; (2) directs the clerk to amend the case caption and serve the petition; and (3) orders respondent to file an answer (or other proper responsive pleading) to the habeas petition.

DISCUSSION

A party filing a Section 2254 habeas corpus petition must either (1) pay the \$5 filing fee for habeas corpus actions or (2) file an application to proceed without prepayment of fees. See 28 U.S.C. § 1914(a) (fees); § 1915 (proceedings in forma pauperis). Here, petitioner's Application is accompanied by a certified copy of his prison account statement listing a balance of \$2.25. On this record, the Court will allow petitioner's Application.

The petition names as respondent the Commonwealth of Massachusetts. The proper respondent to a Section 2254 petition is the petitioner's custodian, which in this case is Lois Russo, the Superintendent at the Souza Baranowski Correctional Center. See Rule 2(a) of Rules Governing Section 2254 Cases; 28 U.S.C. § 2243. The Clerk shall amend the case caption to reflect that Superintendent Russo is the sole respondent in this action.

The Court will direct the Clerk to serve the petition on Superintendent Russo and the Attorney General for the Commonwealth of Massachusetts. See Rules Governing Section 2254 Cases in the United States District Courts, Rule 4 (service).

ORDER

ACCORDINGLY, for the reasons stated above, it is hereby ORDERED

- (1) the petitioner's Application to Proceed Without Prepayment of Fees is GRANTED.
- (2) the Clerk shall correct the case caption to list Lois Russo, Superintendent as the sole respondent.
- (3) the Clerk shall serve a copy of this Memorandum and Order and the petition by mailing copies, certified mail, to Superintendent Lois Russo, Souza Baranowski Correctional Center, P.O. Box 8000, Shirley, MA 01464; AND Cathryn A. Neaves, Assistant Attorney General, Office of the Attorney General, One Ashburton Place, Boston, MA 02108.

- (4) the Respondent shall, within twenty (20) days of receipt of this Memorandum and Order, file an answer (or other proper responsive pleading) to the habeas petitions. This Court further requests the Respondent, as part of the return, to file such documents which reflect on the issue as to whether Petitioner exhausted available state remedies with respect to the matters raised by the Petition.

SO ORDERED.

Dated at Boston, Massachusetts, this 30th day of August, 2004.

s/ Edward F. Harrington
EDWARD F. HARRINGTON
UNITED STATES DISTRICT JUDGE